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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,912	09/20/2005	Roberto Alvarez Arevalo	36-1925	4788
23117 7590 12/02/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER MCLEOD, MARSHALL M				
ART UNIT 2457		PAPER NUMBER		
MAIL DATE 12/02/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/549,912

**Applicant(s)**

ALVAREZ AREVALO ET AL.

**Examiner**

MARSHALL MCLEOD

**Art Unit**

2457

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-10.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/ARIO ETIENNE/  
Supervisory Patent Examiner, Art Unit 2457

Continuation of 11, does NOT place the application in condition for allowance because: With respect to applicant arguments in the middle of page 2 of the instant remarks that "those skilled in the art would not have been able led to combine Zhu with Aharoni in the way the examiner allege". The examiner disagrees and would like to direct applicant to the scope of the invention of Zhu which discloses a minimum-delay jitter smoothing device and method for packet video and Aharoni which discloses a system for adaptive video/audio transport over a network. Those skilled in the art would been led to combine the prior arts due to there similar nature of handling and improving video over a network. Applicant also contends at the botom of page 2 of the instnt remarks that the prior art does not disclose (i) "for at least one candidate version, computing in respect of at least one discrete portion as yet unsent the maximum value of buffer fullness that would be needed to avoid buffer overflow were any number of portions starting with that portion to be sent at the currently ascertained permitted rate," nor (ii) "comparing the determined maximum needed buffer fullness value(s) with the current buffer fullness state,". The examiner respectfully disagrees and refers applicant to the rejection of claim 1 in the final office action. applicant also contends at the top of page 3 of the instant arguments that applicants invention is aiming to avoid underflow, whereas the prior art is trying to avoid overflow and does not give a countermeasure as how to deal with underflow. The examiner respectfully disages and directs applicant to the prior art Zhu (Column 3, lines 26-67 continued through to Column 4 lines 1-62). With respect to applicants argument at the bottom of page 3 of the instant remarks, applicant contends that the prior art Zhu just derives one value, for the interval of  $t-1$  to  $t+1$ . The examiner disagrees and directs applicant to Zhu (Column 5, lines 1-41), which gives several formulas for computing the maximum buffer fullness. Applicants further contends at the top of page 4 that there is no reason for a person skilled in the art to combine Aharoni and Zhu. The examiner disagrees and refers applicant to the abstracts of Aharoni and Zhu which both discloses transporting video over a network and a person skilled in the art would see fit to combine Aharoni and Zhu to improve video streaming/transport over a network. Next applicant contends at the bottom of page 4 that claims 2, 7, 8, 9 and 10 are fundamentally the same as claim one and for the same foregoing reasons as given for claim 1, claims 2, 7, 8, 9 and 10 and there dependent claims should be allowed. The examiner respectfully disagrees and refers applicants to the response given above as to applicants arguments in regards to claim 1. As such claims 2, 7, 8, 9, 10 and there dependent claims are rejected for the same reasons given in response to claim 1 arguments above.